

**EXHIBIT E**

DIRECT LOAN DOCUMENTS

## COMMERCIAL PROMISSORY NOTE

Date: \_\_\_\_\_

Dollars \$ \_\_\_\_\_

Date Due: On Demand or

For value received, the undersigned, promises to pay to the order of **CITY/COUNTY OF** \_\_\_\_\_ at \_\_\_\_\_ Street, \_\_\_\_\_, California, \_\_\_\_\_, or any other place designated at any time by the holder hereof, in lawful money of the United States of America, the principal sum of (\$), or so much thereof as is disbursed and remains outstanding hereunder on demand or on the due date hereof, together with interest (calculated on the basis of actual days elapsed in a 360-day year) on the unpaid balance hereof from the date hereof until this Note is fully paid, at a rate of \_\_\_\_ percent (\_\_\_\_%) per annum.

All interest shall be paid monthly on the outstanding balance beginning \_\_\_\_\_, 19\_\_\_\_, and on the 1st day of each month until \_\_\_\_\_, 19\_\_\_\_. Beginning \_\_\_\_\_, 19\_\_\_\_, the undersigned shall pay principal and interest payments in \_\_\_\_\_ (\_\_\_\_) consecutive monthly installments of \_\_\_\_\_ each on the first day of each month until \_\_\_\_\_. On \_\_\_\_\_, the entire unpaid principal and all accrued and unpaid interest hereon shall become due and payable. Each installment as set forth above when paid shall be applied first in payment of accrued interest and the balance thereof shall be applied in reduction of principal.

Each time any installment of principal or interest hereunder is not paid when due or within fifteen (15) days thereafter, the undersigned agrees to pay a late charge of Five Percent (5%) of the monthly payment amount upon demand by the \_\_\_\_\_.

This Note may be prepaid, in full, prior to maturity, without penalty to the undersigned.

If interest hereon is not paid when due, or if any other indebtedness of the undersigned to the \_\_\_\_\_ is not paid when due, or if a garnishment summons or a writ of attachment is issued against or served upon the \_\_\_\_\_ for the attachment of any property of the undersigned in the \_\_\_\_\_'s possession or any indebtedness owing to the undersigned, or if the holder hereof shall at any time in good faith believe that the prospect of due and punctual payment of this Note is impaired, or if any covenant or provision of the Deed of Trust or Security Agreement executed by the undersigned of even date herewith is violated, then, in any such event, the holder hereof may, at its option, declare this Note to be immediately due and payable and thereupon this Note shall be immediately due and payable, together with all unpaid interest accrued hereon, without notice or demand; provided, however, that if this Note is payable on demand, nothing herein contained shall preclude or limit the holder hereof from demanding payment of this Note at any time and for any reason, without notice. If this Note is not paid when due (whether at maturity or upon acceleration or demand), the CITY/COUNTY of \_\_\_\_\_ shall also have the right to set off the indebtedness evidenced by this Note against any indebtedness of CITY/COUNTY of \_\_\_\_\_ to the undersigned. This Note shall also become automatically due and payable (including unpaid interest accrued thereon) without notice or demand should the undersigned die (an individual) or should a petition be filed by or against the undersigned under the United States Bankruptcy Code. The outstanding principal

balance due on the Note after default shall bear interest at the contract rate herein provided or at the rate of fifteen percent (15%) per annum, whichever is higher.

Unless prohibited by law, the undersigned agree(s) to pay all costs of collection, including reasonable attorneys' fees and legal expenses, incurred by the holder hereof in the event this Note is not duly paid. The holder hereof may at any time renew this Note or extend its maturity date for any period and release any security for, or any party to, this Note, all without notice to or consent of and without releasing any accommodation maker, endorser or guarantor from liability on this Note. Presentment or other demand for payment, notice of dishonor and protest are hereby waived by the undersigned and each endorser and guarantor. This Note shall be governed by the substantive laws of the State of California.

This Note is secured by a Security Agreement, a corporate guaranty, and Deed of Trust of even date herewith.

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## LOAN AGREEMENT

THIS AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_, between \_\_\_\_\_ (the "BORROWER"), and the CITY/COUNTY of \_\_\_\_\_, (the "LENDER"), having its principal office at \_\_\_\_\_.

### W I T N E S S E T H

In consideration of the mutual covenants and agreements contained herein, the parties agree as follows:

1. PURPOSE AND AMOUNT OF LOAN. LENDER agrees to lend to BORROWER, and the BORROWER hereby agrees to borrow from LENDER and repay to LENDER or its assigns the principal sum of \$\_\_\_\_\_ hereinafter called the Loan for the purpose of \_\_\_\_\_ (Description of project).
2. INTEREST. Interest on the loan to be made hereunder shall bear interest at the rate of \_\_\_\_% per annum on the principal received. Interest shall be payable monthly, beginning on the first day of the month following the date of first disbursement of principal and interest is due in accordance with Section 3 hereof, computed from the date on which each disbursement of the principal is made.
3. TERM. The term of the loan shall be \_\_\_\_ months. All payments shall be applied first to the payment of interest accrued to the date of receipt thereof, and the balance, if any, to the reduction of principal.
4. THE NOTE. The loan to be made hereunder shall be evidenced by a note in such form as the LENDER shall require (the "NOTE") and shall be executed by the BORROWER and personally guaranteed by: \_\_\_\_\_ (the "Guarantors").
5. RIGHTS AND OBLIGATION. The holders of the Note, and BORROWER, hereby expressly reserve all right to amend any provision of this Agreement, to consent to or waive any departure from the provisions of this Agreement, to amend or consent to or waive departure from the provision of the Note, and to release or otherwise deal with any collateral security for payment of the Note. BORROWER further agrees to repay, on time, all principal and interest and other charges on loans made by \_\_\_\_\_, its assigns, or other lending institutions relating to the financing of the project.
6. CONDITIONS OF CLOSING. The obligation of LENDER to make loan as provided in this Agreement is subject to the receipt by LENDER from BORROWER of the Note in compliance with the

terms hereof and, in LENDER'S sole discretion, to the following additional conditions precedent:

- a. The truth and accuracy, as of the closing date, of all representations and warranties made herein by BORROWER and the receipt by LENDER of such documents, certificates of officers of BORROWER, and such other evidence, as LENDER shall have requested respecting the meeting of these conditions.
- b. The entry by certain affiliates and principal of BORROWER (hereinafter the "Guarantors") into an agreement with LENDER, dated as of the closing date, pursuant to which the Guarantors guarantee the prompt and punctual payment when due of the principal of the interest on the Note, and any other amounts that may be or become due from BORROWER to LENDER under or pursuant to the terms of this Agreement and Note.
- c. The receipt by LENDER from BORROWER of copies of all documents in connection with this Agreement and the transactions contemplated whereby, or respecting the business and affairs of borrower, that LENDER or its counsel may reasonably have requested, satisfactory in form and substance to LENDER and its counsel and certified, when appropriate, by proper corporate officers and governmental authorities.
- d. The payment by the BORROWER of all closing costs and expenses including but not limited to the fee charged by attorney closing said loan.

7. APPLICATION OF PROCEEDS.

- a. BORROWER agrees that it will apply the funds received by it under this Agreement in accordance with the use of loan proceeds specified in the loan request as approved by the LENDER and described in Section 1 above.
- b. BORROWER agrees to provide additional equity funds to cover additional project costs incurred as a result of overruns or unanticipated expenses in financing the project.

8. DISBURSEMENT OF LOAN. (Working Capital projects only) The LENDER will make progress payments to the BORROWER as follows: BORROWER will make a draw request to the LENDER not more often than once monthly stating the value of the labor and materials purchased and/or incorporated in the work less the aggregate of previous payments. The value of the labor material and/or incorporated in the work shall be determined upon the following to be furnished by BORROWER to LENDER along with each draw request:

- a. a list showing the quantity and price of materials purchased and/or incorporated in the work during the previous months, together with paid invoices of

- suppliers thereof or other information requested by the LENDER,
- b. a receipted statement from each subcontractor setting forth the charges made for work performed during previous month,
  - c. affidavits per statutes and releases of liens.

LENDER will disburse the funds in proportion to the progress of the work with the privilege of retaining at all times sufficient funds necessary to complete the work.

LENDER shall make payment to the BORROWER only when the BORROWER furnishes a paid receipt and in all other cases payment may be made directly to the person performing the services or furnishing the goods or materials.

9. SECURITY

- a. BORROWER Shall execute and deliver to LENDER at the closing of the Loan a security agreement (the "Security Agreement") and financing statements (the "Financing Statements") giving LENDER security in all of the items (hereinafter the "Equipment") listed in Exhibit A, attached hereto and hereby made a part hereof, to secure payment of the principal of the Note, the interest thereon, and any other sums payable by BORROWER hereunder.
- b. BORROWER represents that as of closing date LENDER will have a valid \_\_\_\_\_ priority security interest in all of the Equipment.
- c. The Security Agreement, Financing Statements, and Note shall be in form satisfactory to LENDER and shall provide, among other things, that in the event of default by the BORROWER in any agreement, covenant or condition contained in this Loan Agreement, or in the Note or Security Agreement, LENDER may, at its option, in addition to all other remedies, take possession of the property given as security. LENDER however, shall be under no obligation to exercise this right and its action in this respect shall be wholly at its option.
- d. BORROWER Shall, on demand, submit to LENDER annually paid tax receipts showing that current taxes have been paid.
- e. LENDER shall, until the Note has been fully repaid with interest, have the right at all reasonable hours to inspect and audit all books, records, contractual documents, and all other papers relating to the business of BORROWER; and LENDER shall be given free access to the Real Estate for the purpose of such inspection or audit and also for the purpose of determining the condition of the premises. In addition, BORROWER shall provide to LENDER financial statements at least quarterly.

10. INSURANCE. Borrower will have and maintain insurance at all times with respect to all Collateral against risks of fire and extended coverage, theft, and other risks as Secured Party may require and, in the case of motor vehicles, collision, containing such terms, in such form, for such periods and written by such companies as may be satisfactory to Secured Party, such insurance to be payable to Secured Party and BORROWER as their interests may appear; all policies of insurance shall provide for ten days written minimum cancellation notice to Secured Party and at request of Secured Party shall be delivered to and held by it; and Secured Party may act as attorney for BORROWER in obtaining, adjusting, settling and canceling such insurance and endorsing any drafts.
11. REPRESENTATIONS. In order to induce the LENDER to make the Loan hereunder, BORROWER represents and warrants:
- a. That BORROWER is not a party to any action, suit of preceding pending, or, to the knowledge of the BORROWER, threatened at law or in equity before any Court or administrative officer or agency which brings into question the validity of the transaction herein contemplated or might result in any adverse change in the business or financial condition of the BORROWER.
  - b. That the BORROWER is not in default of any obligations, covenants, or conditions contained in any bond, debenture, note, or other evidence of indebtedness or any mortgages or collateral instruments securing the same. The making of this agreement and the consummation of the transaction contemplated herein will not violate any provision of law or result in a breach or constitute a default under any agreement to which BORROWER is a part or result in a creation of any lien, charge or encumbrance upon any of its property or its assets.
  - c. BORROWER has filed all tax returns which are required to be filed and has paid or made provision for the payment of all taxes which have or may become due pursuant to said returns or pursuant to any assessments received by them. No tax liability has been asserted by the Internal Revenue Service or other taxing agency, federal, state or foreign, for taxes materially in excess of those already provided for and the BORROWER knows of no basis for any such deficiency assessment.
  - d. BORROWER hereby indemnifies and holds LENDER harmless against any losses, claims, damages or liabilities to which it may be subject as a result of any claim for services in the nature of a finder's fee or commission with respect to the transaction contemplated hereunder or arising out of any such claim and will reimburse

LENDER for any legal or other expenses incurred by it in investigating or defending any such claim or liability asserted therefor.

- e. The BORROWER shall use all of the proceeds of this loan for the purposes stated in Section 1 hereof.

12. CONDITIONS OF LOANS. The making of the Loan hereunder shall be subject to the following precedent:

- a. All of the representations and warranties contained in this Agreement shall be true and correct on and as of the closing date.
- b. All proceedings taken in connection with the transaction contemplated by this Agreement and all documents incidental thereto shall be satisfactory in form, scope and substance to LENDER'S counsel, and LENDER shall have received copies of all documents which it or its counsel may reasonably request in connection with the transaction in form, scope and substance satisfactory to its counsel.
- c. All necessary approvals or consents, if any such approvals or consents be required of Governmental bodies having jurisdiction with respect to any construction herein contemplated, shall have been obtained, and failure to have obtained such consents shall constitute a default hereunder.
- d. If BORROWER, or any entity constituting part of BORROWER, or any guarantor of the loan to be made hereunder is a corporation, there shall be delivered to LENDER (with respect to each such corporation, if there be more than one) a copy of the record of minutes of the Board of Directors of each such corporation specifically authorizing its officers to execute this Agreement and all other documents necessary to the consummation of this transaction. The record of the minutes of the Board shall be certified to be true by the Secretary or Assistant Secretary of such corporation.
- e. BORROWER shall have paid (or, at the option of LENDER, will pay promptly after closing) all reasonable expenses in connection with the Loan including, but not limited to, expenses for appraisals, surveys, searches, guarantees, perfecting and recording papers, whether or not a loan is made.
- f. All necessary approvals or consents required with respect to this transaction by any mortgage or other party having any interest in the Equipment or the Real Estate shall have been obtained, and failure to have obtained such consents shall constitute a default hereunder.

13. AFFIRMATIVE COVENANTS. Until payment in full of the Note and all of the other payments due LENDER hereunder and the



performance of all of the terms, conditions and provisions of this Agreement and the mortgages, BORROWER shall cause the following to be done:

- a. BORROWER will deliver to LENDER within fifteen (15) days after any written request therefore from LENDER such information as may be reasonably necessary to determine whether the BORROWER is complying with its covenants and agreements contained in this Loan Agreement or an Event of Default has occurred.
- b. BORROWER will punctually pay or cause to be paid the principal and interest to become due in respect to the Note in accordance with terms thereof.
- c. BORROWER will, upon demand, promptly pay and discharge all taxes, assessments or other governmental charges which may lawfully be levied or assessed on their income or profits or on any property, real, personal or mixed, belonging to them or upon any part thereof, and also all lawful claims for labor or material and supplies, which, if unpaid, might become a lien or charge upon any such property except that BORROWER shall not be required to pay any such taxes, assessments, charges, levies or claims so long as the validity thereof shall be actively contested in good faith by proper proceedings, provided that any such tax, assessment, charge, levy or claim shall be placed in escrow during such proceedings and shall be paid forthwith upon a final adjudication and order to pay from Court of competent jurisdiction.
- d. BORROWER will, upon demand, pay or cause to be paid the principal and interest on all indebtedness to other LENDERS heretofore or hereafter incurred or assumed by it when and as the same shall become due and payable unless such indebtedness be renewed or extended, and will observe, perform and discharge all of the covenants, conditions and obligations which are imposed on it by any and all agreements securing or evidencing an encumbrance upon the Equipment or the Real Estate so as to prevent an occurrence of any act or omission which under the provisions thereof may be declared to be a default thereunder which could result in a lien being placed upon the Equipment or the Real Estate.
- e. BORROWER will at all times cause all of the property to be maintained and kept in such condition and repair that LENDER'S security will be adequately protected.
- f. In the event that any provision of this Agreement or any other instrument executed at closing or the application thereof to any person or circumstances shall be declared unenforceable by a Court of competent jurisdiction, the remainder of such agreement shall nevertheless remain in full force and effect, and to this end, the provisions of all

covenants, conditions, and agreements described herein are deemed separate.

- g. The Equipment and all of the buildings and improvements upon the Real Estate which are of insurable character will be kept insured by financially sound and reputable insurers against loss or damage by fire, explosion and other hazards customarily insured against by extended coverage for the full insurable value of the property insured and in any event an amount sufficient to prevent the owner thereof from becoming a co-insurer, the proceeds thereof including accrued interest, to be paid to LENDER to satisfy the balance owing on the Note at the time of the loss, the remainder of the insurance proceeds to be payable to BORROWER. If the proceeds of the insurance together with such other funds as are available to BORROWER are sufficient to pay for the restoration of the premises, BORROWER and LENDER shall negotiate in good faith for the application of such funds to such restoration. BORROWER agrees to deliver certificates showing compliance with these insurance requirements. BORROWER will maintain, with financially sound and reputable insurers, insurance against other hazards and risks including Workmen's Compensation Insurance, as appropriate.
- h. BORROWER will give LENDER prior notice, in writing, of any public hearing or meeting before any administrative or other public agency which may, in any manner, affect the Real Estate or the Equipment.
- i. BORROWER will begin purchase of the equipment and/or construction of the Contract promptly and will diligently prosecute the work and will complete the same on or before the \_\_\_ day of \_\_\_\_\_, 19\_\_.
- j. BORROWER will furnish from time-to-time, whenever requested, statements showing itemization of prospective expenditures, expenditures to date, items due and unpaid, and itemized statements with receipted bills and other evidence satisfactory to LENDER.
- k. BORROWER agrees to maintain the level of its work force at \_\_\_ employees and create at least \_\_\_ additional permanent full-time equivalent employees. Borrower warrants that 51% of its new employees will reside in \_\_\_\_\_ as set forth on Exhibit "A". \_\_\_\_\_ shall have the right to monitor Borrower's compliance with this provision, and shall have the right to increase borrower's interest rate by two percent on the sums advanced by the \_\_\_\_\_ to Borrower if Borrower fails to comply with this provision.
- l. Additional Assurances. From time-to-time, BORROWERS will execute and deliver any and all further, or other, instruments, and perform such acts, as LENDER

or its counsel may reasonably deem necessary or desirable to confirm and secure to LENDER all rights and remedies conferred upon LENDER by the terms of this Agreement and by the Note.

14. NEGATIVE COVENANTS. Until payment in full of the Note and performance of all the obligations of this Agreement:
- a. BORROWER will neither create nor suffer to exist any mortgage, pledge, lien, charge, or encumbrance, including liens arising from judgments, on the Equipment or the Real Estate (except for such liens as are specifically set forth herein above as exceptions to BORROWER'S title) which remain on the property for more than ten days, except for taxes not delinquent or being contested in good faith and by appropriate proceedings.
  - b. BORROWER will neither sell nor convey nor suffer to be conveyed any of its property in a manner that is not in the ordinary course of its business during the terms of its obligation to LENDER.
15. ADDITIONAL COVENANTS.
- a. Expenses. BORROWER agrees to pay all costs and taxes that might be imposed or determined to be payable in connection with the execution, issuance or delivery of the Note, or in connection with any modification, amendment, or alteration of the terms and provisions thereof, and to save LENDER and any other holder of the Note harmless against any and all liability with respect to, all of which agreements of BORROWER shall survive payment of the Note.
  - b. Expenses of Collection or Enforcements. If BORROWER shall at any time default in making any payment of principal of or interest on the Note, BORROWER agrees that it will, to the full extent permitted by law, pay to the holder of the Note, in addition to any other amounts that may be due from BORROWER to such holder, an amount equal to the costs and expenses of collection or enforcement incurred by such holder in such collection.
  - c. Expenses of Correction by Lender of Default. In the event of any default by BORROWER in full performance or observance of any covenant or agreement contained herein or in the Note, LENDER may, upon 15 days of written notice to BORROWER, and at LENDER'S sole option (but without any obligation of LENDER to do so) take such steps as may be necessary or appropriate to correct or remedy such default in whole or in part, and all costs and expenses incurred by LENDER in taking such steps (including reasonable attorney's fee incurred by LENDER and including any other sums paid or payable by LENDER to third parties) shall forthwith

upon written demand by LENDER by due and payable by BORROWER to LENDER, with interest thereon (payable on the first day of each calendar month) from the time of incurrence thereof by LENDER at the rate of 10% per annum until paid. In the event LENDER takes any action provided for in the preceding sentence, the commencement or taking of such action shall not be deemed to be a waiver by LENDER of the default of BORROWER or a waiver of any other available or remedy of LENDER by reason of such default.

- d. Expenses of Amendments, Waiver, Consents, Etc. In the event BORROWER proposes to take or omit any act or action on the part of BORROWER prohibited or required by any provision of this Agreement or the Note, and BORROWER requests Lender to consent thereto or waive compliance with any such provision, or in the event BORROWER requests LENDER to consent to any modification or amendment of this Agreement or the Note then, in each such case, BORROWER agrees to reimburse or pay to LENDER (any expenses incurred by LENDER) in connection with such consent or waiver, or such modification or amendment, as the case may be.

- 16. EVENTS OF DEFAULT. The principal indebtedness evidenced by the Note or the unpaid balance thereof at the time outstanding, shall be due and payable at the election of the LENDER if any one or more of the following events (herein called "events of Default") shall occur for any reason whatsoever, and whether such occurrence shall be voluntary, involuntary or come about or be effected by operation of law, or pursuant to or in compliance with any judgment, decree or order of any court or any order, rule or regulation of any administrative or government body.
  - a. Default shall be made in payment of any principal of or interest on the Note when due and payable, and such default be continued for a period of 30 days; or
  - b. Default shall be made in the performance or observance of any of the covenants or agreements contained in Sections 11, 12, 13, 14 hereof, or of any other provision of this Loan Agreement; or
  - c. Any representation or warranty made by the BORROWER herein or any statement or representations made in any certificate, statement, or opinion delivered pursuant to this Loan Agreement shall prove to have been incorrect in any material respect as of the date when made; or
  - d. Any obligations of the BORROWER for the payment of borrower money (other than its obligations hereunder or under the Note\_ shall not be paid at its maturity or any such obligations shall become or be declared, pursuant to its terms, to be due and payable prior to

- the express maturity thereof by reason of default or other violation of the terms thereof; or
- e. Default shall be made in the performance or observance of any of the other covenants or agreements or BORROWER herein contained not covered by (a), (b), (c) or (d) above, and such default shall have continued for a period of 30 days after notice thereof to the BORROWER by LENDER; or
  - f. BORROWER shall admit in writing its inability to pay its debts generally as they become due, make an assignment for the benefit of creditors, file a petition in bankruptcy, be adjudicated insolvent or bankrupt, petition or apply to any tribunal for the appointment of any receiver or trustee thereof or of any substantial part of its property or commence any proceedings under any arrangement, readjustment of debt, or statute of any jurisdiction, whether now or hereafter in effect; or there is commenced against BORROWER any such proceedings which remains undismissed for a period of 30 days; or
  - g. BORROWER by any act indicates its consent to, approval of, or acquiescence in any such proceedings or in the appointment of any receiver or of any trustee for BORROWER with respect to a substantial part of its property.
  - h. If any final judgment for the payment of money that is not fully covered by liability insurance and is in excess of \$10,000.00 shall be rendered against BORROWER and if not discharged with 30 days.
  - i. If the BORROWER during the term of this loan effects a change in ownership or control of the business of its assets without prior written consent of the LENDER.
17. WAIVER OF NOTICE. The BORROWER and Guarantors hereby expressly waive any requirement for presentation, demand, protest, notice of protest or other notice or dishonor of any kind, other than the notice specifically provided for in this Agreement.
18. NOTICES. All notices, demands and communications provided for herein or made hereunder shall be delivered, or sent by certified mail, return receipt requested, addressed in each case as follows, until some other address shall have been designated in a written notice to the other party hereto given in like manner.

To Borrower:

\_\_\_\_\_

To Lender:

\_\_\_\_\_

\_\_\_\_\_

and shall be deemed to have been given or made when so delivered or mailed. Notification of change shall be delivered to LENDER and BORROWER with ten days of any change affecting this provision.

19. SURVIVAL OF REPRESENTATIONS, WARRANTIES, AND OBLIGATIONS. All representations and warranties contained herein shall survive the execution and delivery of this Agreement and of the Note, the Security Agreement and Financing Statements, and any investigation at any time made by the LENDER or on its behalf, and any sale or transfer of the Note, Security Agreement and Financing Statements. All obligations of BORROWER and Guarantors under this Loan Agreement, and under the Note, the Security Agreement, which have not been fully performed, paid and satisfied at the time of closing of the Loan, shall survive the closing.
20. CONSTRUCTION AND AMENDMENT. This Loan Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements and understandings of the parties in connection therewith. This Agreement may not be changed, amended or terminated orally but only by agreement in writing and signed by the party against whom enforcement of any change, amendment or termination is sought.
21. PAYMENT. The BORROWER will pay to LENDER at its address specified in Section 17, or at such other address as it may designate in writing, all amounts payable with respect to the principal of, and interest on, any Note held by the LENDER.
22. SUCCESSORS AND ASSIGNS. All covenants, agreements, representations and warranties made herein or in certificates delivered in connection herewith shall, whether so expressed or not, bind and inure to the benefit of the successors and assigns of the BORROWER and LENDER.
23. COUNTERPARTS. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.
24. NO WAIVER: REMEDIES CUMULATIVE. No exercise, partial exercise, failure or delay on the part of the LENDER in exercising any power or right hereunder, or under the Note or Security Agreement, shall operate as a waiver of the power or right, except as specifically provided herein. No remedy conferred herein or in the Note or Security Agreement

is intended to be exclusive, to any other remedy, and each and every other remedy given hereunder or now hereafter existing at law or in equity or by statute or otherwise, may be sought by the enforcing party.

25. EXECUTION BY ADDITIONAL PARTIES AND GUARANTEE. When any party other than those named at the outset of this Agreement join in the execution hereof, they have done so for the purpose of consenting to all of the terms and conditions hereof and agree by such execution to be bound hereby. Any party who has signed this Agreement as Guarantor shall be deemed to have guaranteed performance by BORROWER of all of its obligations hereunder and under the Note, Security Agreement and Financing Statements, and all such persons or entities who have signed as Guarantor shall be deemed to have made such guarantee unconditionally, and they shall be jointly and severally liable for the performance by BORROWER of all of such obligations.
26. GOVERNING LAW. This Agreement and the Note, the Security Agreement and the Financing Statements shall be governed by and interpreted in accordance with the laws of the State of California.

LENDER:

BY: \_\_\_\_\_ Date: \_\_\_\_\_

BY: \_\_\_\_\_ Date: \_\_\_\_\_

BORROWER:

BY: \_\_\_\_\_ Date: \_\_\_\_\_

BY: \_\_\_\_\_ Date: \_\_\_\_\_

BY: \_\_\_\_\_ Date: \_\_\_\_\_

GUARANTEE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## PERSONAL GUARANTY

Date:

For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and to induce CITY/COUNTY of \_\_\_\_\_ herein, with its participants, successors and assigns, called the "Lender"), at its option, at any time or from time to time to make loans or extend other accommodations to or for the account of \_\_\_\_\_ (herein called "Borrower") of to engage in any other transactions with Borrower, the undersigned hereby absolutely and unconditionally guarantee(s) to the Bank the full and prompt payment when due, whether at maturity or earlier by reason of acceleration or otherwise, of each and every debt, liability and obligation of every type and description which Borrower may now or at any time hereafter owe to Bank (whether such debt, liability or obligation now exists or is hereafter created or incurred, and whether it is or may be direct or indirect, due to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several or joint and several; all such debts, liabilities and obligations being hereinafter collectively referred to as the "Indebtedness").

The undersigned further acknowledge(s) and agree(s) with Lender that:

1. No act or thing need occur to establish the liability of the undersigned hereunder, and no act or thing, except full payment and discharge of all indebtedness, shall in any way exonerate the undersigned or modify, reduce, limit or release the liability of the undersigned hereunder.
2. This is an absolute, unconditional and continuing guaranty of payment of the Indebtedness and shall continue to be in force and be binding upon the undersigned, whether or not all Indebtedness is paid in full, until this guaranty is revoked prospectively as to future transactions, by written notice actually received by the Lender, and such revocation shall not be effective as to Indebtedness existing or committed for at the time of actual receipt of such notice by the Lender, or as to any renewals, extensions and refinancings thereof. The undersigned represents and warrants to the Lender that the undersigned has a direct and substantial economic interest in Borrower and expects to derive substantial benefits therefrom and from any loans and financial accommodations resulting in the creation of Indebtedness guaranteed hereby, and that this guaranty is given for a corporate purpose. The undersigned agrees to rely exclusively on the right to revoke this guaranty prospectively as to future transactions, in accordance with this paragraph, if at any time, in the opinions



of the directors or officers of the undersigned, the corporate benefits then being received by the undersigned in connection with this guaranty are not sufficient to warrant the continuance of this guaranty as to future Indebtedness. Accordingly, so long as this guaranty is not revoked prospectively in accordance with this paragraph, the Lender may rely conclusively on a continuing warranty, hereby made, that the undersigned continues to be benefitted by this guaranty and the Lender shall have no duty to inquire into or confirm the receipt of any such benefits, and this guaranty shall be effective and enforceable by the Lender without regard to the receipt, nature or value of any such benefits.

3. If the undersigned shall be dissolved or shall be or become insolvent (however defined) then the Lender shall have the right to declare immediately due and payable, and the undersigned will forthwith pay to the Lender, the full amount of all Indebtedness, whether due and payable or unmatured. If the undersigned voluntarily commences or there is commenced involuntarily against the undersigned a case under the United States Bankruptcy Code, the full amount of all Indebtedness, whether due and payable or unmatured, shall be immediately due and payable without demand or notice thereof.
4. The liability of the undersigned hereunder shall be unlimited and the undersigned shall be liable for all Indebtedness, without any limitation as to amount), plus accrued interest thereon and all attorneys' fees, collection costs and enforcement expenses referable thereto. Indebtedness may be created and continued in any amount, whether or not in excess of such principal amount, without affecting or impairing the liability of the undersigned hereunder. The Lender may apply any sums received by or available to the Lender on account of the Indebtedness from Borrower or any other person (except the undersigned), from their properties, out of any collateral security or from any other source to payment of the excess. Such application of receipts shall not reduce, affect or impair the liability of the undersigned hereunder. If the liability of the undersigned is limited to a stated amount pursuant to this paragraph 4, any payment made by the undersigned under this guaranty shall be effective to reduce or discharge such liability only if accompanied by a written transmittal document, received by the Lender, advising the Lender that such payment is made under this guaranty for such purpose.
5. The undersigned will not exercise or enforce any right of contribution, reimbursement, recourse or subrogation available to the undersigned against any person liable for payment of the Indebtedness, or as to any collateral security therefor, unless and until all of the Indebtedness shall have been fully paid and discharged.
6. The undersigned will pay or reimburse the Lender for all costs and expenses (including reasonable attorneys' fees and legal expenses)

incurred by the Lender in connection with the protection, defense or enforcement of this guaranty in any litigation or bankruptcy or insolvency proceedings.

7. Whether or not any existing relationship between the undersigned and Borrower has been changed or ended and whether or not this guaranty has been revoked, the Lender may, but shall not be obligated to, enter into transactions resulting in the creation or continuance of indebtedness, without any consent or approval by the undersigned and without any notice to the undersigned. The liability of the undersigned shall not be affected or impaired by any of the following acts or things (which the Lender is expressly authorized to do, omit or suffer from time to time, both before and after revocation of this guaranty, without notice to or approval by the undersigned); (I) any acceptance of collateral security, guarantors, accommodation parties or sureties for any or all Indebtedness; (ii) any one or more extensions or renewals of Indebtedness (whether or not for longer than the original period) or any modification of the interest rates, maturities or other contractual terms applicable to any Indebtedness; (iii) any waiver or indulgence granted to borrower, any delay or lack of diligence in the enforcement of Indebtedness, or any failure to institute proceedings, file a claim, give any required notices or otherwise protect any Indebtedness; (iv) any full or partial release of, settlement with, or agreement not to sue, Borrower or any other guarantor or other person liable in respect of any Indebtedness; (v) any discharge of any evidence of Indebtedness or the acceptance of any instrument in renewal thereof of substitution therefor; (vi) any failure to obtain collateral security (including rights of setoff) for Indebtedness, or to see to the proper or sufficient creation and perfection thereof, or to establish the priority thereof, or to protect, insure, or enforce any collateral security; or any modification, substitution, discharge, impairment, or loss of any collateral security; (vii) any foreclosure or enforcement of any collateral security; (viii) any transfer of any Indebtedness or any evidence thereof; (xi) any order of application of any payments or credits upon Indebtedness; (x) any election by the Lender under § 111(b)(2) of the United States Bankruptcy Code.
8. The undersigned waive(s) any and all defenses, claims, and discharges of Borrower, or any other obligor, pertaining to Indebtedness, except the defense of discharge by payment in full. Without limiting the generality of the foregoing, the undersigned will not assert, plead or enforce against the Lender any defense of waiver, release, discharge in bankruptcy, statute of limitations, res judicata, statute of frauds, anti-deficiency statute, fraud, incapacity, minority, usury, illegality or unenforceability which may be available to Borrower or any other person liable in respect of any Indebtedness, or any setoff available against the Lender to Borrower or any such other person, whether or not on account of a related transaction. The

undersigned expressly agree(s) that the undersigned shall be and remain liable for any deficiency remaining after foreclosure of any mortgage or security interest securing Indebtedness, whether or not the liability of Borrower or any other obligor for such deficiency is discharged pursuant to statute or judicial decision.

9. The undersigned waive(s) presentment, demand for payment, notice of dishonor or nonpayment, and protest of any instrument evidencing Indebtedness. The Lender shall not be required first to resort for payment of the Indebtedness to Borrower or other person or their properties, or first to enforce, realize upon or exhaust any collateral security for Indebtedness, before enforcing this guaranty.
10. If any payment applied by the Lender to Indebtedness is thereafter set aside, recovered, rescinded or required to be returned for any reason (including, without limitation, the bankruptcy, insolvency or reorganization of Borrower or any other obligor), the Indebtedness to which such payment was applied shall for the purposes of this guaranty be deemed to have continued in existence, notwithstanding such application, and this guaranty shall be enforceable as to such Indebtedness as fully as if such application had never been made.
11. The liability of the undersigned under this guaranty is in addition to and shall be cumulative with all other liabilities of the undersigned to the Lender as guarantor or otherwise, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.
12. The undersigned represents and warrants to the Lender that (I) the undersigned is a corporation duly organized and existing in good standing and has full power and authority to make and deliver this guaranty; (ii) the execution, delivery and performance of this guaranty by the undersigned have been duly authorized by all necessary action of its directors and shareholders and do not and will not violate the provisions of, or constitute a default under, any presently applicable law or its articles of incorporation or by-laws or any agreement presently binding on it; (iii) this guaranty has been duly executed and delivered by the authorized officers of the undersigned and constitutes its lawful, binding and legally enforceable obligation (subject to the United States Bankruptcy Code and other similar laws generally affecting the enforcement of creditors' rights); and (iv) the authorization, execution, delivery and performance of this guaranty do not require notification to, registration with, or consent or approval by, any federal, state or local regulatory body or administrative agency.
13. This guaranty shall be effective upon delivery to the Lender, without further act, condition or acceptance by the Lender, shall

be binding upon the undersigned and the successors and assigns of the undersigned and shall inure to the benefit of the Lender and its participants, successors and assigns. Any invalidity or unenforceability of any provision or application of this guaranty shall not affect other lawful provisions and application hereof, and to this end the provisions of this guaranty are declared to be severable. This guaranty may not be waived, modified, amended, terminated, released or otherwise changed except by a writing signed by the undersigned and the Lender. This guaranty is issued in the state set forth above and shall be governed by its laws. The undersigned waives notice of the Lender's acceptance hereof and waives the right to a trial by jury in any action based on or pertaining to this guaranty.

This guaranty is: \_\_\_\_ unsecured;  X  secured by a DEED OF TRUST or security agreement of even date herewith; \_\_\_\_ secured by

IN WITNESS WHEREOF, this guaranty has been duly executed by the undersigned the day and year first above written.

BY: \_\_\_\_\_

TITLE: \_\_\_\_\_

## SECURITY AGREEMENT

\_\_\_\_\_,  
Debtor/Borrower

The CITY/COUNTY of \_\_\_\_\_  
Secured Party

\_\_\_\_\_  
\_\_\_\_\_  
Address

1. Security Interest and Collateral. To secure the payment and performance of each and every debt, liability and obligation of every type and description which Debtor (whether one or more) may now or at any time hereafter owe to secured Party (whether such debt, liability or obligation now exists or is hereafter created or incurred, whether it is currently contemplated by the Debtor and Secured Party, whether any documents evidencing it refer to this Security Agreement, whether it arises with or without any documents [e.g. obligations to Secured Party created by checking overdrafts], and whether it is or may be direct or indirect, due or to become due, absolute or contingent, primary or secondary, liquidated or unliquidated, or joint, several or join and several, all such debts, liabilities and obligations being herein collectively referred to as the "Obligations"). Debtor hereby grants Secured Party a security interest (herein called the "Security Interest") in the following property (herein called the "Collateral"):

(a) INVENTORY:

\_\_\_\_\_ All inventory of Debtor, whether now owned or hereafter acquired and wherever located.

(b) EQUIPMENT, FARM PRODUCTS AND CONSUMER GOODS

\_\_\_\_\_ All equipment of debtor, whether now owned or hereafter acquired, including but not limited to all present and future machinery, vehicles, furniture, fixtures, manufacturing equipment, farm machinery and equipment, shop equipment, office and record keeping equipment, parts and tools, and the goods described in any equipment schedule or list herewith or hereafter furnished to Secured Party by Debtor (but no such schedule or list need be furnished in order for the security interest granted herein to be valid as to all of Debtor's equipment) excluding, however, motor vehicles the ownership of which is evidenced by certificate of title.

\_\_\_\_\_ The following goods or types of goods:

(c) ACCOUNTS AND OTHER RIGHTS TO PAYMENT

\_\_\_\_\_ Each and every right of Debtor to the payment of money whether such right to payment now exists or hereafter arises, whether such right to payment arises out of a sale, lease or other disposition of goods or other property by Debtor, out of a rendering of services by Debtor, out of a loan by Debtor, out of the overpayment of taxes or other liabilities of Debtor, or otherwise arises under any contract or agreement, whether such right to payment is or is not already earned by performance, and howsoever such right to payment may be evidenced, together with all other rights and interests (including all liens and security interests) which Debtor may at any time have by law or agreement against any account debtor or other obligor obligated to make any such payment or against any of the property of such account debtor or other obligor, all including but not limited to all present and future debt instruments, chattel papers, accounts, loans and obligations receivable and tax refunds.

(d) GENERAL INTANGIBLES

\_\_\_\_\_ All general intangibles of Debtor, whether now owned or hereafter acquired, including, but not limited to, applications for patents, patents, copyrights, trademarks, trade secrets, good will, trade names, customers' lists, permits and franchises, and the right to use Debtor's name.

together with all substitutions and replacements for and products of any of the foregoing property not constituting consumer goods and together with proceeds of any and all of the foregoing property and in the case of all tangible Collateral, together with all accessions and, except in the case of consumer goods, together with (I) all accessories, attachments, parts, equipment and repairs now or hereafter attached or affixed to or used in connection with any such goods, and (ii) all warehouse receipts, bills of lading and other documents of title now or hereafter covering such goods.

2. Representations, Warranties and Agreements. Debtor represents, warrants and agrees that :

- (a) Debtor is an individual, a partnership, a corporation and, if Debtor is an individual, the Debtor's

residence is at the address of Debtor shown at the beginning of this Agreement.

- (b) The Collateral will be used primarily for personal, family or household purposes; farming operations; business purposes.
- (c) If any part or all of the tangible Collateral will become so related to particular real estate as to become a fixture, the real estate concerned is:  
and the name of the record owner is:
- (d) Debtor's chief executive office is located at  
or, if left blank, at the address of Debtor shown at the beginning of this Agreement.

3. Additional Representations, Warranties and Agreements. Debtor represents, warrants and agrees that

(a) Debtor has (or will have at the time Debtor acquires rights in Collateral hereafter arising) absolute title to each item of Collateral free and clear of all security interests, liens and encumbrances, except the Security Interest, and will defend the Collateral against all claims or demands of all persons other than Secured Party. Debtor will not sell or otherwise dispose of the Collateral or any interest therein without the prior written consent of Secured Party, except that, until the occurrence of an Event of Default and the revocation by Secured Party of Debtor's right to do so, debtor may sell any inventory constituting Collateral to buyers in the ordinary course of business and use and consume any farm products constituting Collateral in Debtor's farming operation. If Debtor is a corporation, this Agreement has been duly and validly authorized by all necessary corporate action, and, if Debtor is a partnership, the partner(s) executing this Agreement has (have) authority to act for the partnership.

(b) Debtor will not permit any tangible Collateral to be located in any state (and, if county filing is required, in any county) in which a financing statement covering such Collateral is required to be, but has not in fact been, filed in order to perfect the Security Interest.

(c) Each right to payment and each instrument, document, chattel paper and other agreement constituting or evidencing Collateral is (or will be when arising or issued) the valid, genuine and legally enforceable obligation, subject to no defense, set-off or counterclaim (other than those arising in the ordinary course of business) of the account debtor or other obligor named therein or in Debtor's records pertaining thereto as being obligated to pay such obligation. Debtor will neither agree to any material modification or amendment nor agree to any cancellation of any such obligation without Secured Party's prior written consent, and will not subordinate any such right to payment to claims of other creditors of such account debtor or other obligor.

(d) Debtor will (I) keep all tangible Collateral in good repair, working order and condition, normal depreciation excepted, and will, from time to time, replace any worn, broken or defective parts thereof; (ii) promptly pay all taxes and other governmental charges levied or assessed upon or against any Collateral or upon or against the creation, perfection or continuance of the Security Interest, (iii) keep all Collateral free and clear of all security interests, liens and encumbrances, except the Security Interest, (iv) at all reasonable times, permit Secured Party or its representatives to examine or inspect any Collateral, wherever located, and to examine, inspect and copy Debtor's books and records pertaining to the Collateral and its business and financial condition, (v) keep accurate and complete records pertaining to the Collateral and pertaining to Debtor's business and financial condition and submit to Secured Party such periodic reports concerning the Collateral and Debtor's business and financial condition as Secured Party may from time to time reasonably request, (vi) promptly notify Secured Party of any loss of or material damage to any Collateral or of any adverse change, known to Debtor, in the prospect of payment of any sums due on or under any instrument, chattel paper, or account constituting Collateral, (vii) if Secured Party at any time so requests (whether the request is made before or after the occurrence of an Event of Default), promptly deliver to Secured Party any instrument, document or chattel paper constituting Collateral, duly endorsed or assigned by Debtor; (viii) at all times keep all tangible Collateral insured against theft and in such amounts as Secured Party may reasonably request, with any loss payable to Secured Party to the extent of its interest; (ix) from time to time execute such financing statements as Secured Party may reasonably require in order to perfect the Security Interest; (x) pay when due or reimburse Secured Party on demand for all costs of collection of any of the Obligation and all other out-of-pocket expenses (including in each case all reasonable attorney's fees) incurred by Secured Party in connection with the creation, perfection, satisfaction, protection, defense or enforcement of the Security Interest or the creation, continuance, protection, defense or enforcement of this Agreement or any or all of the Obligations, including expenses incurred in any litigation or bankruptcy or insolvency proceedings; (xi) execute, deliver or endorse any and all instruments, documents, assignments, security agreements and other agreements and writings which Secured Party may at any time reasonably request in order to secure, protect, perfect or enforce the Security Interest and Secured Party's rights under this Agreement; (xii) not use or keep any Collateral, or permit it to be used or kept, for any unlawful purpose or in violation of any federal, state or local law, statute or ordinance; (xiii) permit Secured Party at any time and from time to time to send requests (after the occurrence of an Event of Default) to account debtors or other obligors for verification of amounts owed to Debtor; and (xiv) not permit any tangible Collateral to become part of or to be affixed to any real property without first assuring to the reasonable satisfaction of Secured Party that the Security Interest will be prior and senior to any interest or lien then held or thereafter acquired by any mortgagee of such real property or the owner or purchaser of any interest therein.



If Debtor at any time fails to perform or observe any agreement contained in this Section 3(d), and if such failure shall continue for a period of ten calendar days after Secured Party gives Debtor written notice thereof (or, the case of the agreements contained in clauses (viii) and (ix) of this Section 3(d), immediately upon the occurrence of such failure, without notice or lapse of time), Secured Party may (but need not) perform or observe such agreement on behalf and in the name, place and stead of Debtor (or, at Secured Party's option, in Secured Party's own name) and may (but need not) take any and all other actions which Secured Party may reasonably deem necessary to cure or correct such failure (including, without limitation, the payment of taxes, the satisfaction of security interests, liens, or encumbrances, the performance of obligations under contracts or agreements with account debtors or other obligors, the procurement and maintenance of insurance, the execution of financing statements, the endorsement of instruments, and the procurement of repairs, transportation or insurance); and, except to the extent that the effect of such payment would be to render any loan or forbearance of money usurious or otherwise illegal under any applicable law, Debtor shall thereupon pay Secured Party on demand the amount of all moneys expended and all costs and expenses (including reasonable attorneys' fees) incurred by Secured Party in connection with or as a result of Secured Party's performance or observing such agreements or taking such actions, together with interest thereon from the date expended or incurred by secured Party at the highest rate then applicable to any of the Obligations. To facilitate the performance or observance by Secured Party of such agreements of Debtor, Debtor hereby irrevocably appoints (which appointment is coupled with an interest) Secured Party, or its delegate, as the attorney-in-fact of Debtor with the right (but not the duty) from time to time to create, prepare, complete, execute, deliver, endorse or file, in the name and on behalf of Debtor, any and all instruments, documents, financing statements, applications for insurance and other agreements and writings required to be obtained, executed, delivered or endorsed by Debtor under this Section 3 and Section 4, such power to only be in effect in the event of default, which default remains uncured for a period of thirty (30) days following the giving of notice to Debtor by Secured Party, as defined herein and in the Loan Agreement of even date herewith.

4. Lock Box, Collateral Account. If Secured Party so requests after the occurrence of an Event of Default, which default remains uncured for a period of thirty (30) days following the giving of notice to Debtor by Secured Party, Debtor will direct each of its account debtors to make payments due under the relevant account or chattel paper directly to a special lock box to be under the control of Secured Party. Debtor hereby authorizes and directs Secured Party to deposit into a special collateral account to be established and maintained with Secured Party all checks, drafts and cash payments, received in said lock box. All deposits in said collateral account shall constitute proceeds of Collateral and shall not constitute payment of any Obligation. At its option, Secured Party may, at any time, apply finally collected funds on deposit in said collateral account to the payment of the Obligations in such order of application as Secured Party may determine, or permit

Debtor to withdraw all or any part of the balance on deposit in said collateral account. If a collateral account is so established, Debtor agrees that it will promptly deliver to secured Party, for deposit into said collateral account, all payments on accounts and chattel paper received by it. All such payments shall be delivered to Secured Party in the form received (except for Debtor's endorsement where necessary). Until so deposited, all payments on accounts and chattel paper received by Debtor shall be held in trust by Debtor for and as the property of Secured Party and shall not be commingled with any funds or property of Debtor.

5. Collection Rights of Secured Party. Notwithstanding Secured Party's rights under section 4 with respect to any and all debt instruments, chattel papers, accounts and other rights to payment constituting Collateral (including proceeds). Secured Party may, at any time after the occurrence of an Event of Default, which default remains uncured for a period of thirty (30) days following the giving of notice to Debtor by Secured Party, notify any account debtor, or any other person obligated to pay any amount due, that such chattel paper, account, or other right to payment has been assigned or transferred to Secured Party for security and shall be paid directly to Secured Party. If Secured Party so requests at any time, Debtor will so notify such account debtors and other obligors in writing and will indicate on all invoices to such account debtors or other obligors that the amount due is payable directly to Secured Party. At any time after Secured Party or Debtor gives such notice to an account debtor or other obligor, Secured Party may (but need not), in its own name or in Debtor's name, demand, sue for, collect or receive any money or property at any time payable or receivable on account of, or securing, any such chattel paper, account, or other right to payment, or grant any extension to, make any compromise or settlement with or otherwise agree to waive, modify, amend, or change the obligations (including collateral obligations) of any such account debtor or other obligor.

6. Assignment of Insurance. Debtor hereby assigns to Secured Party, as additional security for the payment of the Obligations, which assignment shall be effective immediately upon an Event of Default, which default remains uncured for a period of thirty (30) days following the giving of notice by Secured Party to Debtor, any and all moneys (including but not limited to proceeds of insurance and refunds of unearned premiums) due or to become due under, and all other rights of Debtor under or with respect to, any and all policies of insurance covering the Collateral, and Debtor hereby directs the issuer of any such policy to pay such money directly to Secured Party. After the occurrence of an Event of Default which remains uncured for thirty (30) days following notice by Secured Party to Debtor, Secured Party may (but need not), in its own name or in Debtor's name, execute and deliver proofs of claim, receive all such moneys, endorse checks and other instruments representing payment of such moneys, and adjust, litigate, compromise or release any claim against the issuer of any such policy. (This section shall not be construed as affecting Secured Party's rights as loss payee with respect to any insurance policies.)

7. Events of Default. Events of Default whenever used herein, mean one of the following events:

- (a) Default in the payment (which continues uncured for a period of thirty (30) days or more) of any principal or interest on the Note or any fees or charges required hereunder as they become due and payable;
- (b) For a period of thirty (30) days or more, any representation or warranty made by the Borrower in this Agreement or on any certificate, instrument, or statement contemplated by or made or delivered pursuant to or in connection with this Agreement, shall prove to have been incorrect in any material respect;
- (c) The Borrower, or any one of them, shall be adjudicated a bankrupt or insolvent, or admit in writing of their inability to pay debts as they mature, or make an assignment for the benefit of creditors; or shall apply for a consent for the appointment of any receiver, trustee, or similar officer for all or a substantial part of their property; or such receiver, trustee, or similar officer shall be appointed without the application or consent of the Borrower, or any one of them, as the case may be, and such appointment shall continue undischarged for a period of sixty (60) days; or any one of them shall institute (by petition, application, answer, consent, or otherwise) any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, liquidation, or similar proceeding relating to any one of them under the laws of any jurisdiction; or any such proceeding shall be instituted (by petition, application or otherwise) against any one of them and shall remain undismissed for a period of sixty (60) days; or any judgment, writ, warrant, attachment, execution, or similar process shall be issued or levied against any one of them and such judgment, writ or similar process shall not be released, vacated or fully bonded within sixty (60) days after its issue or levy;
- (d) For a period of thirty (30) days, the Borrower defaults under any term, condition or provision of any of the documents given in connection with this Security Agreement;

8. Remedies Upon Event of Default. Upon the occurrence of an Event of Default under section 7 and said default remains uncured thirty (30) days after the giving of notice of default by Secured Party to Debtor, and at any time thereafter, Secured Party may exercise any one or more of the following rights and remedies (I) declare all unmatured Obligations to be immediately due and payable, and the same shall thereupon be immediately due and payable, without presentment or other notice or demand; (ii) exercise and enforce any or all rights and remedies available upon default to a secured party by means of

initiating judicial proceedings against Debtor to obtain possession of the Collateral.

9. Other Personal Property. Unless at the time Secured Party takes possession of any tangible Collateral, or within seven (7) days thereafter, Debtor gives written notice to Secured Party of the existence of any goods, papers or other property of Debtor, not affixed to or constituting a part of such Collateral, but which are located or found upon or within such Collateral, describing such property, Secured Party shall not be responsible or liable to debtor for any action taken or omitted by or on behalf of Secured Party with respect to such property without actual knowledge of the existence of any such property or without actual knowledge that it was located or to be found upon or within such Collateral.

10. Miscellaneous. This Agreement does not contemplate a sale of accounts, or chattel paper. This Agreement can be waived, modified, amended, terminated or discharged, and the Security Interest can be released, only explicitly in a writing signed by Secured Party. A waiver signed by Secured Party shall be effective only in the specific instance and for the specific purpose given. Mere delay or failure to act shall not preclude the exercise or enforcement of any of Secured Party's rights or remedies. All rights and remedies of Secured Party shall be cumulative and may be exercised singularly or concurrently, at Secured Party's option, and the exercise or enforcement of any one such right or remedy shall neither be a condition to nor bar the exercise or enforcement of any other. All notices to be given to Debtor shall be deemed sufficiently given if delivered or mailed by registered or certified mail, postage prepaid, to Debtor and Joint Venturers at their addresses set forth above or at the most recent address shown on Secured Party's records. Secured Party's duty of care with respect to Collateral in its possession (as imposed by law) shall be deemed fulfilled if Secured Party exercises reasonable care in physically safekeeping such Collateral or, in the case of Collateral in the custody or possession of a bailee or other third person, exercises reasonable care in the selection of the bailee or other third person, and Secured Party need not otherwise preserve, protect, insure or care for any Collateral. Secured Party shall not be obligated to preserve any rights Debtor may have against prior parties, to realize on the Collateral at all or in any particular manner or order, or to apply any cash proceeds of Collateral in any particular order of application. This Agreement shall be binding upon and inure to the benefit of Debtor and Secured Party and their respective heirs, representative, successors and assigns and shall take effect when signed by Debtor and delivered to Secured Party, and Debtor waives notice of Secured Party's acceptance hereof. Secured Party may execute this Agreement if appropriate for the purpose of filing, but the failure of Secured Party to execute this agreement shall not affect or impair the validity or effectiveness of this Agreement. A carbon, photographic or other reproduction of this Agreement or of any financing statement signed by the Debtor shall have the same force and effects as the original for all purposes of a financing statement. Except to the extent otherwise required by law, this Agreement shall be governed by the internal laws of the state named

as part of Secured Party's address above. If any provision or application of this Agreement is held unlawful or unenforceable in any respect, such illegality or unenforceability shall not affect other provisions or applications which can be given effect, and this Agreement shall be construed as if the unlawful or unenforceable provision or application had never been contained herein or prescribed hereby. All representations and warranties contained in this Agreement shall survive the execution, delivery and performance of this Agreement and the creation and payment of the Obligations. The term "Debtor" shall refer to\_\_\_\_\_ and the Obligations shall include all debts, liabilities and obligations owed to Secured Party by Debtor, and all property described in Section 1 shall be included as part of the Collateral.

Debtor

Secured Party

By:\_\_\_\_\_

By:\_\_\_\_\_

Title: \_\_\_\_\_

Title:\_\_\_\_\_

## DEED OF TRUST

This Deed of Trust, made this \_\_\_\_ day of \_\_\_\_\_, 19\_\_ by and between \_\_\_\_\_, whether one or more (hereinafter called the "Trustor"), whose mailing address is \_\_\_\_\_, \_\_\_\_\_ (hereinafter called the "Trustee"), whose mailing address is \_\_\_\_\_ and \_\_\_\_\_ (hereinafter called the "Beneficiary"), whose mailing address is \_\_\_\_\_.

### WITNESSETH:

**WHEREAS**, Trustor is the guarantor of an indebtedness to Beneficiary, as evidenced by the Promissory Note of even date herewith in the original principal amount of \_\_\_\_\_ (\$\_\_\_\_\_) which Note will be referenced herein as "Note" and "Note secured hereby";

**NOW, THEREFORE**, for the purpose of securing said guaranty of payment of the Note, according to its terms and any extensions or renewals thereof, and for the purposes of securing performance of Trustor under the agreements herein contained, Trustor irrevocably grants and transfers to Trustee, in trust with **POWER OF SALE**, all of the following described real estate situated in \_\_\_\_\_ County, California (hereinafter called the "Described Premises"):

, an addition to the City of \_\_\_\_\_ as surveyed,  
platted and recorded in \_\_\_\_\_ County, California

together with all buildings, fixtures and improvements upon the described Premises, whether now or hereafter existing, all rights-of-way, easements, rents, issues, profits, income, tenements, hereditaments, privileges and appurtenances belonging, used or enjoyed in connection with the described premises, or any part thereof (subject, however, to be the right, power and authority of Trustor to collect and apply such rents, issues, profits and income as they become due and payable, so long as no default exists hereunder) and all proceeds of conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims, including, without limitation, proceeds of insurance and condemnation awards, (all of which collectively is hereinafter referred to as the "Trust Property").

**IT IS AGREED**, without affecting the generality of any of the foregoing provisions, that all heating, cooling, air conditioning and plumbing appliances and equipment now or hereafter attached to, or built in, any building or improvement, now or hereafter erected upon the described premises, shall be deemed fixtures and a part of the realty, and are a portion of the Trust Property.

**TO HAVE AND TO HOLD** the Trust Property upon and subject to the trusts and agreements hereinafter set forth:

1. Trustor guarantees the punctual payment of the principal of, and interest on, the Note on the dates and at the place and in the manner provided therein and to punctually perform all agreements, conditions and provisions of any other security instrument given in connection with this transaction.
2. Trustor, at its expense, will maintain and preserve the lien of this deed of Trust as a first and paramount lien upon the Trust Property, will cause this Deed of Trust, and each amendment or supplement thereto, to be filed and recorded as a mortgage of the Trust Property, in such manner and in such place, and will take such other action as in the opinion of Trustee may be required by any present or future law in order to perfect, maintain and protect the lien of this Deed of Trust, as the same may be from time to time amended or supplemented.
3. If title to any part of the Trust Property shall be taken in condemnation proceedings, by right of eminent domain or similar action, or shall be sold under threat of condemnation, all awards, damages and proceeds are hereby assigned and shall be paid to Trustee who shall apply such amount to the prepayment of the Note. Trustor will promptly, and with due diligence, repair, alter and restore the remaining part of the Trust Property to its former condition substantially to the extent that the same may be feasible and so as to constitute a complete and usable unit.
4. Trustor, at its expense, will maintain with insurers approved by Beneficiary insurance with respect to the improvements and personal property constituting the Trust Property against loss by fire, lightning, and other perils covered by standard extended coverage endorsement, in an amount equal to at least 100% of the full replacement value thereof; and insurance against such other hazards and in such amount as is customarily carried by owners and operators of similar properties and as Beneficiary may require for its protection. Trustor will comply with such other requirement as Beneficiary may from time to time request for the protection by insurance of the interest of the respective parties. All insurance policies maintained pursuant to this Deed of Trust shall name Trustor, Trustee and Beneficiary as insureds, as their respective interests may appear, and provide that there shall be no cancellation or modification without 15 days prior written notification to Trustee and Beneficiary. In the event any policy hereunder is not renewed on or before 15 days prior to its expiration date, Trustee or Beneficiary may procure such insurance, pay the premiums therefor, and such sums shall immediately become due and payable with interest at the rate of 15% per annum until paid and shall be secured by this Deed of Trust. All policies of insurance required by this Deed of Trust shall be delivered to and retained by Trustee. Failure of Trustor

to furnish such insurance, or renewals as are required hereunder, or failure to pay any sums advanced hereunder shall, at the option of Beneficiary, constitute a default. All unearned premiums are hereby assigned to Trustee as additional security and a sale and conveyance of the Trust Property by the Trustee shall operate to convey to the purchaser the Trustor's interest in and to all policies of insurance upon the Trust Property.

5. In case of any damage to, or destruction of, the buildings, improvements or personal property constituting part of the Trust Property, whether such loss is covered by insurance or otherwise, Trustor, at its sole cost and expense, will promptly restore, repair, replace and rebuild the same as nearly as practicable to its condition immediately prior to such damage or destruction or with such changes and alterations as Trustor may deem appropriate, provided such changes and alterations do not materially lessen the value and utility of such buildings, improvements and personalty from that existing immediately prior to such damage or destruction. Trustor shall be entitled to reimbursement from the Trustee to the extent of the net insurance proceeds received by Trustee, but only to the extent of the actual sum expended under this provision.
6. If Trustor is a corporation, it will do all things necessary to preserve its corporate existence, rights and privileges under the laws of the state of its incorporation.
7. Trustor will not commit any waste upon the Trust Property and will, at all times, maintain the same in good operating order and condition and will make, from time to time, all repairs, renewals, replacements, additions and improvements which are reasonably needful or desirable to such end. No building or improvement now or hereafter erected upon the Trust Property shall be altered, removed or demolished without the prior written consent of Beneficiary.
8. If during the existence of this Trust, there shall be threatened, commenced or pending any suit or action affecting any of the Trust Property, the title thereto or the priority of the lien of this Deed of Trust thereon, or if any adverse claim for or against the Trust Property, or any part thereof, be made or asserted, the Trustee, Beneficiary, or both, may appear or intervene in any such suit or action, retain counsel therein, and defend the same, or otherwise take such action as they may deem advisable and settle or compromise the same or the adverse claim; and in that regard and for any of such purposes may pay and expend such sums of money as Trustee or Beneficiary may deem advisable, which sums shall be deemed to have been advanced hereunder and secured by this Deed of Trust.
9. Trustor hereby covenants, warrants and agrees with Beneficiary, its successors and assigns, that Trustor owns the Trust Property



free from any prior lien or encumbrance, that this Deed of Trust is and will remain a valid and enforceable lien on the Trust Property, that Trustor will preserve such title and will forever warrant and defend the same to the Beneficiary and will forever warrant and defend the validity and priority of the lien hereof against the claim of all persons and parties whomsoever. Trustor will make such further assurance or assurances to perfect its title to the Trust Property as may be reasonably required by Beneficiary. Trustor hereby relinquishes all right of dower and homestead in and to the Trust Property.

10. Trustor will pay all taxes, assessments and other public charges upon the Trust Property before the same by law become delinquent and when any such taxes, assessments or public charges shall be levied upon the Note secured by this Deed of Trust, or upon the Trustee of Beneficiary, or upon their successors or assigns. On account of said debt or the lien of this Deed of Trust (except income taxes) Trustor will pay such taxes, assessments or public charges prior to the time the same shall, by law, become delinquent.
11. If Beneficiary shall so request, Trustor agrees that there shall be added to each periodic payment required to be made hereunder an amount estimated by Trustee to be sufficient to enable Trustor to pay, at least 30 days before delinquency, all taxes, assessments or other public charges against the Trust Property, the Note secured by this Deed of Trust, or upon account of the or the lien of this Trust Deed, together with premiums for insurance required to be provided under this Deed of Trust and no interest shall be payable to Trustor in respect thereof. Upon demand by Trustee, Trustor shall deliver to Trustee such additional sums of money as are necessary to make up any deficiency in the amounts necessary to enable Trustee to pay any of the foregoing items.
12. Trustor, at its expense, will execute and deliver to the Trustee, promptly upon demand, such security instruments as may be required by Trustee, in form and substance satisfactory to Trustee, covering any of the Trust Property conveyed by this Deed of Trust, which security instruments shall be additional security for Trustor's faithful performance of all of the terms, covenants and conditions of this Deed of Trust, the Note secured hereby, and any other security instruments executed in connection with this transaction. Such instruments shall be recorded or filed, and rerecorded and refiled, at Trustor's expense.
13. Within 10 days after demand, Trustor shall furnish to Trustee a schedule certified to be true, setting forth all leases of space in the Trust Property then in effect, including, in each case, the name of the tenants and occupants, a description of the space occupied by such tenant and occupant, the rental payable for such space and such other information and documents with respect to such leases and tenancies as the Trustee may request.

14. All payments made under the provisions of this Deed of Trust, of the Note secured hereby, which may be construed as interest, shall not, in the aggregate over the term hereof, exceed the rate that may be lawfully contracted in writing in the State of California.
15. Without the prior written consent of Trustee, Trustor shall not, directly or indirectly, with respect to any lease of space in the described premises, whether such lease is now or hereafter in existence: (a) accept or permit any prepayment, discount or advance rent payable thereunder; (b) cancel or terminate the same, or accept any cancellation, termination or surrender thereof, or permit any event to occur which would entitle the lessee thereunder to terminate or cancel the same; © amend or modify the same so as to reduce the term thereof, the rental payable thereunder, or to change any renewal provisions therein contained; (d) waive any default thereunder or breach thereof; (e) give any consent, waiver or approval thereunder or take any other action in connection therewith, or with a lessee thereunder, which would have the effect of impairing the value of lessor's interest thereunder, or the property subject thereto, or of impairing the position or interest of the Trustee or Beneficiary; or (f) sell, assign, pledge, mortgage or otherwise dispose of, or encumber, its interest in any such lease or any rents, issues or profits issuing or arising thereunder.
16. Trustor agrees that: (a) the duties and obligations of Trustee shall be determined solely by the express provisions of this Deed of Trust and the Trustee shall not be liable except for the performance of such duties and obligations as are specifically set forth herein, and no implied covenants or obligations shall be imposed upon Trustee; (b) no provision of this Deed of Trust shall require Trustee to expend or risk its own funds, or otherwise incur any financial obligation in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers, if it shall have grounds for believing that the repayment of such funds or adequate indemnity against such risk or liability is not reasonably assured to it; © Trustee may consult with counsel of its own choosing and the advice of such counsel shall be full and complete authorization and protection in the respect of any action taken or suffered by it hereunder in good faith and in reliance thereon; (d) Trustee shall not be liable for any action taken by it in good faith and reasonably believed by it to be authorized or within the discretion or rights of powers conferred upon it by this Deed of Trust.
17. In the event of any default hereunder, under the Note, or under any other security instrument given in connection with this transaction, trustee shall be entitled, at any time, at its option, and without regard to the value of the security or the solvency or insolvency of Trustor, to enter upon and take possession of the Trust Property, or any part thereof, and to do and perform such acts as may be necessary or proper to repair,

protect and to conserve the value thereof, and to rent or lease the same, or any part thereof, upon such rental, terms and conditions as its judgment may dictate, and to collect and receive the rents, issues and profits thereof, which said rents, issues and profits, present and future, are hereby assigned to the Trustee as further security, but which assignment Trustee agrees not to enforce so long as no such default has occurred.

18. Trustor expressly covenants and agrees to pay and discharge all costs, fees and expenses of this Trust, including, in the event of sale by the Trustee of the Trust Property, the Trustee's costs, expenses and fees, which fees shall not exceed \$500.00 plus  $\frac{1}{2}$  of 1% of the amount secured hereby and remaining unpaid.
19. If Trustor shall sell or convey the Trust Property, or any part thereof, or any interest therein, or shall be divested of its title, or any interest therein, in any manner or way, whether voluntarily or involuntarily, without the written consent of Beneficiary being first had and obtained, Beneficiary shall have the right at its option, to declare any indebtedness or obligations secured hereby, irrespective of the maturity date specified in any note evidencing the same, immediately due and payable without notice, and said debt shall thereupon become absolute. If the ownership of the Trust Property, or any part thereof, becomes vested in a person other than the Trustor, Beneficiary and Trustee may, without notice to the Trustor, deal with such successor or successors in interest with reference to this Deed of Trust and the debt hereby secured as with the Trustor, and may forbear to sue or may extend time for payment of the debt hereby secured without discharging or in any way affecting the liability of the original Trustor hereunder, or upon the debt secured.
20. Trustor will pay to Trustee and to the Beneficiary, respectively, upon demand, the amounts of all sums of money which either shall have paid or expended in curing any default of Trustor under this Deed of Trust, together with interest upon each of said amounts, until paid, from the time of expenditure thereof, at the rate of 15% per annum. All of said sums shall be due and payable, together with interest aforesaid, immediately upon the advancement thereof. Neither Trustee nor Beneficiary shall be under any obligation, however, to cure any default of Trustor.
21. Events of Default. Each of the following occurrences shall constitute an event of default hereunder, (hereinafter called an "Event of Default"):
  - (a) Trustor shall fail to pay when due any principal, interest, or principal and interest on the Indebtedness,
  - (b) Any warranty of title made by Trustor herein shall be untrue,

- (c) Trustor shall fail to observe or perform any of the covenants, agreements or conditions in this Deed of Trust,
- (d) Any representation or warranty made by Trustor on any financial statements or reports submitted to beneficiary by or on behalf of Trustor shall prove false or materially misleading,
- (e) Trustor shall fail to perform or observe any of the covenants, conditions agreements contained in, or binding upon Trustor under any building loan agreement, security agreement, loan agreement, financing statement, or any other agreement, instrument or document executed by Trustor in connection with the loan evidenced by the Note,
- (f) A trustee, receiver or liquidator of the Trust Property or of Trustor shall be appointed, or any of the creditors of Trustor shall file a petition in bankruptcy against Trustor, or for the reorganization of Trustor pursuant to the Federal Bankruptcy Code, or any similar law, whether federal or state, and if such order or petition shall not be discharged or dismissed within thirty (30) days after the date on which such order or petition was filed,
- (g) Trustor shall file a petition pursuant to the Federal Bankruptcy Code or any similar law, federal or State, or if Trustor shall be adjudged a bankrupt, or be declared insolvent, or shall make an assignment for the benefit of creditors, or shall admit in writing its inability to pay its debts as they become due, or shall consent to the appointment of a receiver of all or any part of the Trust Property,
- (h) Final judgment for the payment of money shall be rendered against Trustor and Trustor shall not discharge the same, or cause it to be discharged, within thirty (30) days after the entry thereof, and shall not appeal therefrom or from the order, decree or process upon which or pursuant to which said judgment was granted, based, or entered, and secure a stay of execution pending such appeal,
- (i) Trustor shall sell or convey the Trust Property, or any part thereof, or any interest therein, or shall be divested of its title, or any interest therein, in any manner or way, whether voluntarily or involuntarily, without the written consent of Beneficiary being first had and obtained, or
- (j) If Trustor is a corporation or partnership and more than fifty percent (50%) of the shares or beneficial interests in such corporation or partnership, as the case may be, shall be transferred or conveyed, whether voluntarily or involuntarily, without the written consent of Beneficiary being first had and obtained.

22. Acceleration of Debt; Foreclosure. Upon the occurrence of any Event of Default, or any time thereafter, Beneficiary may, at its option, declare all the Indebtedness secured hereby immediately due and payable and the same shall bear interest at the default rate, if any, set forth in the Note, or otherwise at the highest rate permitted by law, and, irrespective of whether Beneficiary exercises said option, it may, at its option and in its sole discretion, without any further notice or demand to or upon Trustor, do one or more of the following;
- (a) Beneficiary may enter upon, take possession of, manage and operate the Trust Property or any part thereof; make repairs and alterations and do any acts which Beneficiary deems proper to protect the security thereof, and either with or without taking possession, in its own name, sue for or otherwise collect and receive rents, issues and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney fees and Beneficiary's costs, upon the indebtedness secured hereby and in such order as Beneficiary may determine. Upon request of Beneficiary, Trustor shall assemble and make available to Beneficiary any of the Trust Property which has been removed. The entering upon and taking possession of the Trust Property, the collection of any rents, issues and profits, and the application thereof as aforesaid, shall not cure or waive any default theretofore or thereafter occurring, or affect any notice of default or notice of sale hereunder or invalidate any act done pursuant to any such notice. Notwithstanding Beneficiary's continuance in possession or receipt and application of rents, issues or profits, Beneficiary shall be entitled to exercise every right provided for in this Deed of Trust or by law upon or after the occurrence of an Event of Default, including the right to exercise the power of sale. Any of the actions referred to in this paragraph may be taken by Beneficiary at such time as Beneficiary may determine without regard to the adequacy of any Security for the indebtedness secured hereby.
  - (b) Beneficiary shall, without regard to the adequacy of any security for the Indebtedness secured hereby, be entitled to the appointment of a receiver by any court having jurisdiction, without notice, to take possession of, protect, and manage the Trust Property and operate the same and collect the rents, issues and profits therefrom.
  - (c) Beneficiary may bring any action in any court of competent jurisdiction to foreclose this Deed of Trust or enforce any of the covenants hereof.
  - (d) Beneficiary may elect to cause the Trust Property or any part thereof to be sold under the power of sale, and in such event, Beneficiary or Trustee shall give such notice of default and notice of sale as may be then required by law. Thereafter, upon

the expiration of such time and the giving of such notice of sale as may then be required by law, Trustee, at the time and place specified by the notice of sale, shall sell such Trust Property, or any part thereof specified by Beneficiary, at public auction to the highest bidder for cash in lawful money of the United States of America. Upon receipt of payment of the price bid, Trustee shall apply the proceeds in the following order: (I) to the cost and expenses of exercising the power of sale and of the sale, including but not limited to, trustee's fees or not more than \$500.00 plus one-half of one percent of the gross sale price, and reasonable attorney fees, (ii) to the Indebtedness, add (iii) the excess, if any, to the person or persons legally entitled thereto.

All costs and expenses incurred by Beneficiary in enforcing any right under this Deed of Trust, including without limitation, abstract or title fees, appraisal fees, premiums for title insurance, attorney fees and court costs, shall be and constitute Indebtedness secured hereby.

23. In case Trustor shall well and truly perform its obligations under this Deed of Trust, and pay or cause to be paid the debt evidenced by the Note and all other moneys agreed to be paid by it under the terms, provisions and conditions of any other security instrument given in connection with this transaction, and also the reasonable expenses of the Trust herein provided, then the Trustee, its successors or assigns, shall reconvey to Trustor all of the Trust Property conveyed to Trustee by the Trustor. Any part of the Trust Property may be reconveyed, at any time, to the Trustor at the request of the Beneficiary without affecting the validity and priority of the lien of this Deed of Trust upon the remainder of the Trust Property.
24. In the event of any one or more of the provisions contained in this Deed of Trust, or of the Note or any other security instrument given in connection with this transaction shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall, at the option of Beneficiary, not affect any other provision of this Deed of Trust, but this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein or therein.
25. Whenever used herein, the singular number shall include the plural, the plural the singular, the use of any gender shall be applicable to all genders, and the term "Beneficiary" shall include any payee of the indebtedness hereby secured or any transferee thereof, whether by operation of law or otherwise.
26. Trustor hereby requests that a copy of any notice of default and a copy of any notice of sale be mailed to it at the mailing address set forth hereinabove.

Notary Public

## **INTERCREDITOR AGREEMENT**

THIS INTERCREDITOR AGREEMENT is dated as of \_\_\_\_\_ and is between \_\_\_\_\_, a national banking association of \_\_\_\_\_, California (the "Bank"), and the CITY/COUNTY of \_\_\_\_\_, California.

### **Preliminary Statement**

The Bank has agreed to lend to \_\_\_\_\_, a California corporation, of \_\_\_\_\_, California (the "Borrower") principal sums not to exceed a total of \_\_\_\_\_ (the "Bank Loans"). The Bank Loan would be made pursuant to a Loan Agreement dated as of \_\_\_\_\_, 19\_\_ (the "Bank Loan Agreement").

The CITY/COUNTY of \_\_\_\_\_ has agreed to lend to the Borrower principal sums not to exceed \_\_\_\_\_ (the "RLF Loan"). The RLF Loan would be made pursuant to a Loan Agreement dated \_\_\_\_\_ (the "RLF Loan Agreement").

The Bank and CITY/COUNTY of \_\_\_\_\_ will secure their respective loans to the Borrower by taking mortgages assignments, and security interests in all of the assets of the Borrower. The purpose of this Agreement is to set forth the relative priorities of the Bank and CITY/COUNTY of \_\_\_\_\_ in that security and to set forth procedures to be taken upon the occurrence of an event of default under the various loan agreements.

### **Agreement**

Pursuant to the facts set forth in the Preliminary Statement and in consideration of the mutual promises of the parties, the Bank and CITY/COUNTY of \_\_\_\_\_ agree as follows:

#### **SECTION 1. LOANS.**

1.1. Bank Loan. Pursuant to the Bank Loan Agreement, the Bank has agreed to make a Loan to the Borrower in an amount not to exceed \_\_\_\_\_. The proceeds of the Loan shall be used, together with the proceeds of the RLF Loan, to finance the following:

1.2. RLF Loan. Pursuant to the RLF Loan Agreement, CITY/COUNTY of \_\_\_\_\_ has agreed to make the RLF Loan to the Borrower in an amount not to exceed \_\_\_\_\_.

#### **SECTION 2. SECURITY.**

2.1. Security for Bank Loan. The obligations of the Borrower to pay the principal of and interest on the Bank Loan and to perform its other obligations under the Bank Loan Agreement and the related security documents (as subsequently described) will be secured by the following:

- (a) A real estate mortgage (the "Bank Mortgage"), in the form attached as Exhibit C to the Bank Loan Agreement, providing for a first mortgage lien in favor of the Bank on the real estate described in Schedule A to the Bank Mortgage (the "Real Estate").



(b) A security agreement (the "Bank Security Agreement"), in the form attached as Exhibit D to the Bank Loan Agreement, providing for a first security interest in favor of the Bank in all of the Borrower's personal property, including without limitation, all machinery and equipment, inventory, documents, investments, accounts, general intangibles and chattel paper (the "Personal Property").

The Real Estate and the Personal Property are referred to collectively as the "Collateral."

2.2. Security for the RLF Loan. The obligation of the Borrower to pay the principal of and interest on the RLF Loan and to perform its other obligations under the RLF Loan Agreement and the related security documents (as subsequently described) will be secured by the following:

(a) A real estate mortgage (the '\_\_\_\_\_ Mortgage'), in the form attached as Exhibit 7 to the RLF Loan Agreement, providing for a second mortgage lien in favor of CITY/COUNTY of \_\_\_\_\_ on the Real Estate.

(b) A security agreement (the "RLF Security Agreement"), executed the same day as the RLF Loan Agreement, providing for a second security interest in favor of CITY/COUNTY of \_\_\_\_\_ in the Personal Property.

### SECTION 3. DISBURSEMENT PROCEDURES; ESCROW.

#### 3.1. Fixed Asset Loan and RLF Loan; Escrow.

(a) Escrow Fund. Upon receipt of the Borrower's first request for disbursement of the RLF Loan, CITY/COUNTY of \_\_\_\_\_ will disburse the entire amount of the RLF Loan into an escrow account (the "Escrow Fund") to be held by the Bank, as escrow agent (in such capacity, the "Escrow Agent"). The Escrow Fund shall be disbursed only upon satisfaction of the terms and conditions for disbursements of the Loan as set forth in the Bank Loan Agreement. If any balance remains in the Escrow Fund in the earlier of (i) the final Loan Disbursement Date or (ii) \_\_\_\_\_, then such balance, together with any interest earnings shall be disbursed by the Escrow Agent to CITY/COUNTY of \_\_\_\_\_.

(b) Escrow Agent Duties; Standard of Care. The Escrow Agent accepts its duties under this Agreement subject to the conditions of this Agreement. By execution of this Agreement, CITY/COUNTY of \_\_\_\_\_ appoints the Escrow Agent to disburse the Escrow Fund. The Escrow Agent assumes no obligation to undertake the collection of any amounts owed to CITY/COUNTY of \_\_\_\_\_ by the Borrower. All payments of principal and interest due to CITY/COUNTY of \_\_\_\_\_ on account of the RLF Loan as evidenced by the RLF Term Loan Note shall be remitted by the Borrower directly to CITY/COUNTY of \_\_\_\_\_, unless otherwise specified in the Note.

The Escrow Agent is expressly authorized to regard and comply with any order, judgment or decree entered by any court and it shall not be liable to anyone if it is in such compliance. The Escrow Agent shall be entitled to rely on a written opinion of counsel concerning the propriety of any action taken or contemplated to be taken. The Escrow Agent shall be entitled to reasonably rely on any document or certificate

delivered to it as to its authenticity or the genuineness of its signatures. The Escrow Agent shall only be liable to CITY/COUNTY of \_\_\_\_\_ for its determinations and actions under this Agreement to the extent that such determinations or actions constitute gross negligence or a clear violation of sound banking practices, except to the extent of observing the ratio of the RLF Loan balance to the Bank's Loan balance in making advances to the Borrower, in which case an ordinary negligence standard shall apply.

(c) Expenses. The cost and expenses of the Escrow Agent, if any, for administering the Escrow Fund shall be borne by the Borrower and shall not be a liability of CITY/COUNTY of \_\_\_\_\_.

#### **SECTION 4. PAYMENTS ON LOANS**

4.1. No Default. So long as no Event of Default (as defined in the Bank Loan Agreement and the RLF Loan Agreement) exists, the Bank and CITY/COUNTY of \_\_\_\_\_ shall each be entitled to receive payment of principal of or interest on their respective loans.

4.2. Default; Notice; Right to Purchase. The Bank and CITY/COUNTY of \_\_\_\_\_ each agree to provide the other written notice promptly following their actual knowledge of an Event of Default under their respective loan documents (a "Notice of Default"). Upon receipt of a Notice of Default, the Bank or CITY/COUNTY of \_\_\_\_\_ may purchase all (but not less than all) of the loans as described in Section 1 of this Agreement of the other, without recourse, at par plus accrued interest, at any time during a 30-day period following receipt of such Notice of Default. Any payments of principal of or interest on the respective loans which may be received by either the Bank or CITY/COUNTY of \_\_\_\_\_ after receipt of a Notice of Default shall be promptly remitted to the Bank which shall disburse such proceeds to the Bank and to CITY/COUNTY of \_\_\_\_\_ in the manner set forth in Section 5.1 of this Agreement.

#### **SECTION 5. PRIORITY IN SECURITY**

5.1. Relative Priority. CITY/COUNTY of \_\_\_\_\_ agrees with the Bank that the mortgage lien of CITY/COUNTY of \_\_\_\_\_ under the RLF Mortgage in the Real Estate and the security interest of CITY/COUNTY of \_\_\_\_\_ under the RLF Security Agreement in the Personal Property shall be and remain at all times junior and subordinate to the mortgage lien of the Bank under the Bank Mortgage in the Real Estate and to the security interest of the Bank under the Bank Security Agreement in the Personal Property. However, such subordination shall not be applicable to any disbursements of the Bank Loans after the Bank has received written notice from CITY/COUNTY of \_\_\_\_\_ of the occurrence of an Event of Default under the RLF Loan Agreement. Accordingly, the Bank shall be entitled to receive all proceeds from the sale or other disposition of the Collateral (including any proceeds thereof) which shall be applied as follows:

(a) First, to the payment of the costs and expenses of such sale, including reasonable compensation to the Bank's agents, attorneys and counsel, and of all expenses, liabilities and advances reasonably made or incurred by the Bank in managing and maintaining the Collateral under any provision of this Agreement, the Bank Mortgage or the Bank Security Agreement, and to the payment of all taxes, assessments and other superior liens, if any, except liens subject to which such sale or exercise of rights shall have been made.

(b) Second, to the payment of the principal and accrued interest then owing and unpaid on the Bank Loans and all other amounts owing to the Bank under the Bank Loan Agreement, the Bank Mortgage or the Bank Security Agreement.

(c) Third, to the payment of the surplus, if any, to CITY/COUNTY of \_\_\_\_\_, its successors or assigns, or to whomsoever shall be lawfully entitled to receive the same.

5.2. Remedies.

(a) Default Under RLF Loan Agreement. If an Event of Default as defined in the RLF Loan Agreement shall have occurred and be continuing and the same shall not have been declared as an Event of Default under the Bank Loan Agreement, CITY/COUNTY of \_\_\_\_\_ shall have the right to bring suit and obtain a judgment but shall have no right to foreclose on any mortgage or security interest which it may have under the RLF Mortgage or the RLF Security Agreement or to take any action of any nature whatsoever against the Borrower which would cause, or result in causing, the Borrower to otherwise be in default under the Bank Loan Agreement, the Bank mortgage or the Bank Security Agreement. However, if because of such Event or Default (as defined in the RLF Loan Agreement) by the Borrower, the Bank determines to foreclose or exercise its rights under the Bank Mortgage or the Bank Security Agreement, then CITY/COUNTY of \_\_\_\_\_ may join in any action instituted by the Bank for the purposes of foreclosing or exercising its rights under the RLF Mortgage or the RLF Security Agreement.

(b) Default After Satisfaction of Bank Loans. If an Event of Default as defined in the RLF Loan Agreement shall have occurred and if, but only if, the Bank Loans have been satisfied in full, CITY/COUNTY of \_\_\_\_\_ shall be entitled to enforce any mortgage or security interest which it may have under the RLF Mortgage or the RLF Security Agreement or to take any other action against the Borrower that CITY/COUNTY of \_\_\_\_\_ deems appropriate.

**SECTION 6. MISCELLANEOUS**

6.1. Notice. All notices, demands, requests and consents under this Agreement shall be in writing and shall be effective when received or shall be deemed to have been given or made by being sent as registered mail, postage prepaid, addressed as follows:

If to the Bank:

If to CITY/COUNTY of \_\_\_\_\_:

Attention:  
If to the Escrow Agent:

or, if any other address shall at any time be designated by either party in writing to the other party, to such address.

6.2. Governing Law. This Agreement shall be deemed to be a contract made under the laws of the State of California and for all purposes shall be construed in accordance with the laws of the State of California

6.3. Binding Effect. This Agreement shall be binding upon the Bank and CITY/COUNTY of \_\_\_\_\_ and their respective successors and assigns, and shall inure to the benefit of the Bank and CITY/COUNTY of \_\_\_\_\_ and their respective successors and assigns.

6.4. Entire Agreement; Amendments. This Agreement and any agreement to which it refers state all rights and obligations of the parties and supersede all other agreements (oral or written) with respect to the subject matter of this Agreement. Any amendment of this Agreement shall be in writing and shall require the signatures of all parties.

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed on \_\_\_\_\_ to be effective upon delivery on \_\_\_\_\_, 19\_\_.